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Soft law acts: prevention of disasters through environmental protection and human rights

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Abstract: The present work aims to investigate the relationship that the soft law acts have with the environment and human rights in the sector of preventive approach for natural disasters. The legal relationship, the protection of the environment, human rights as non-binding, conventional soft law acts have the objective of protecting and preventing natural disasters and avoiding problems of international responsibility towards a general and specific, precise prevention of disasters.

Keywords: natural disasters; soft law acts; protection of human rights; environmental protection; disaster risk; international responsibility; international law.

Introduction

The non-concrete prevention with specific rules in international law for disaster prevention has been a reality for years (Bartolini, 2016; Aronsson-Storrier, 2019). Soft law instruments through principles and guidelines allow states to reduce the losses, that are caused by disasters at an international level (Peel, Fischer, 2016). Disaster prevention has had collateral protection, through international norms, that concerned the environment, cultural heritage and human rights (Zorzi Giustiniani, Sommario, Casolari, Bartolini, 2018).

The discourse of this research is to investigate the relationship, influence between the norms of international law and soft law regarding the protection of human rights and the environment.

Protection as minimum measures that every democratic state should have and as conduct that is compliant with the obligations of disaster prevention in international law and human rights, the environment by establishing measures, that correspond to the standards of soft law acts for disaster risk reduction.

In sum, soft law acts on disaster risk reduction contribute to the development of international human rights law, environment for disaster prevention by interacting on disaster risk reduction.

Prevention for disaster risk reduction to disaster risks in soft law acts

When we talk about prevention we refer to a preventive action of a holistic nature through a uniform approach for the prevention of natural disasters and any type of disaster in our opinion. Elements that the risks to disaster show the typical characteristics of a prevention approach, precaution that has been a cornerstone to international law and to related collateral sectors. This approach adopts disaster risk reduction tools as a qualified and precautionary element.

Preventive action emerges from precautionary measures of disasters at risk situations as a consequence of preventive actions in a preventive capacity to a disaster that materializes (Boisson De Chazournes, 2010). It is a precautionary action that is not consolidated in international law as an obligation to act in a preventive manner that gives certainty to a damage to the protected good of a legal nature. In international law prevention can risk the reduction of risks and is aimed at future, uncertain and perhaps not precise risks (De Sadeleer, 1999). This approach is presented to Sendai framework as an objective, that reduces the risks of a disaster for the prevention and the creation of new risks, that operate in the circle of the disaster, according to the predictions of the Sendai Framework for Disaster Risk

Reduction 2015-2030¹.

The risk that is aimed at the reduction of the risk of disasters cannot be presented as hypothetical. It must present itself as a precise, materialized risk, that excludes the knowledge at one's disposal (Boisson De Chazournes, 2010).

Anticipating preventive action determines the risk of disaster taking into account the causes of the origin of the risk. We are referring to a precautionary approach, that is part of the acts of soft law and in the field of disaster risk reduction in the application of a holistic approach².

The assessment of risks for disasters and in various factors that contribute to risks are factors identified in the dangerous event of vulnerability and exposure of people to the environment and danger. The extent of disaster risks determine the basis of the characteristics of a dangerous event in the conditions of the environment, as a dangerous event, that produces its effects on humans and the environment (Sefsaf, 2022)³.

This type of holistic assessment approach is consolidated in

¹COP Convention on the transboundary effects of industrial accidents, Updated draft decision on strengthening the implementation of the Convention, ECE/CP.TEIA/2020/L.2, 20 November 2020, par. 10: "(...) serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts (...)".

²IPCC, Managing the risks of extreme events and disasters to advance climate change adaptation, Summary for policymakers, Special report, 2012, pp. 7-8.

³IPCC, Climate change: new dimensions in disaster risk, exposure, vulnerability, and resilience. Managing the risks of extreme events and disasters to advance climate change adaptation, Special report, 2012, p. 43.

international law, as a risk, that is assessed in events, that create an immediate cause of damage (Boisson De Chazournes, 2010). The characteristics determine the knowledge, that is related to the event⁴. The holistic approach follows the components of disaster, that manage in an integrated way, the assessments of the possible risks of each disaster (Harrison, 2021), as dangerous events, where the vulnerabilities and events of people, goods and environment are risks for each type of disaster.

The elements of vulnerability and exposure determine the probability of disasters in the distinction of natural disasters of human origin. The idea of natural disasters thus escapes the control of each state (Lauta, 2016) and respects the adoption of measures, that are adequate to the preparation of the response. The exposure of vulnerability allows the human causality of natural disasters, that are predictable to the identification of series of measures that the states adopt in order to prevent and reduce them.

Limitation and development of the precautionary approach in international law disaster

The risks to disaster resulting in soft law instruments respect and provide for international norms in the protection of human rights and the environment.

⁴IPCC, Climate change: new dimensions in disaster risk, exposure, vulnerability, and resilience, op. cit., p. 45, par. 1.3.1.1.

Prevention is based on an action, positive conduct of the state as an obligation that acts preventively to a balance that provides for damage to the legal asset, that protects the positive measures, that reasonably await the light and the capacity of each risk.

The obligation to act imposes on the state a preventive path, as a current and imminent risk for the enjoyment of human rights (Ebert, Sijniensky, 2015). This approach asks the state to prevent damage, that establishes with certainty the causal link between inaction, action and damage to a protected legal asset. The state is expected to act preventively respecting risks that never materialize. This is a claim that imposes on the state to allocate the prevention of uncertain risks, as resources invested urgently to the needs of society, that refer to them.

The adoption of prevention measures, that seek to respect imprecise risks means an excessive burden for each state in front of its own resources and priorities (Villiger, 2023)⁵. This type of approach requires states to intervene preventively only in relation to activities derived from damage, that prevails in international environmental law (Sands, Peel, Fabra, MacKenzie, 2018).

Perhaps in other areas of international law trying to regulate future risks, uncertain in the impact of environmental damage on the lives of human beings (Zimmermann, Tams, Oellers Frahm,

⁵ECtHR, *Osman v. United Kingdom* of 28 October 2008, parr. 115-116.

Tomuschat, 2019)⁶ influences and makes necessary the approach, that guarantees the adoption of preventive measures, when there is a lack of scientific certainty about the risks. The development of this type of approach in international environmental law has an impact on the interpretation of the obligations of protection of human rights as well.

A development of this type of approach is useful for the application of obligations that are positive for the protection of human rights in the face of threats from the phenomenon of climate change⁷. Climate is not a predictable factor, that gives certainty to a catastrophic event, that has to do with climate change and that materializes in a certain place, determining a group of individuals⁸. It is an adequate phenomenon, that produces disastrous effects for all humanity⁹. The field of human rights and of the environment anticipates the obligation to act preventively. A trend that develops the field of international environmental law reaching a level of affirmation in the face of

⁶ICJ, Project Gabčíkovo Nagymaros (Hungary/Slovakia), judgment, 25 September 1997, ICJ Reports 1997, par. 140.

⁷Supreme Court of the State of the Netherlands, The State of the Netherlands v. Urgenda Foundation, sentence of 20 December 2019, case n. 19/00135, par. 5.2.1-5.5.3: <https://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>. Tribunal de première instance francophone de Bruxelles, Section civile, ASBL Klimaatzaak c. Etat belge, Région Wallonne, Région Flamande, Région de Bruxelles Capitale, sentence of 17 June 2021, case n. 2015/4585/A, p. 61: https://www.stradalex.com/fr/sl_src_publ_jur_be/document/civ_2015_4585_A-FR

⁸IPCC, Climate change: new dimensions in disaster risk, exposure, vulnerability, and resilience, op. cit., p. 40.

⁹Supreme Court of the State of the Netherlands, The State of the Netherlands v. Urgenda Foundation, op. cit., par. 5.6.2; Tribunal de Bruxelles, ASBL Klimaatzaak, op. cit., p. 61.

natural events, that are not linked to climate change.

The affirmation of international law, as a precautionary approach to disaster risks, concerns a recognition of the vulnerability of a social or environmental nature of disaster risks. Practice recognizes gender, age, health conditions, belonging to indigenous communities and ethnic minorities, poverty, etc., as factors that increase the relative risk that has to do with the violation of human rights in the case of exposure to a dangerous event that causes a disaster.

The concept of vulnerability to disasters also applies to ecosystems, their characteristics and disaster risks, that require preventive action such as conservation, that is considered to reduce the vulnerability of the community of disasters¹⁰. To impose on each state to adopt the relative preventive measures¹¹ in the context of international environmental law and human rights as a traditional approach, is a reactive type, that is based on the certainty of the causal link between action, inaction of the state and damage. Practice shows, that the affirmation of a proactive approach, that is based on assumptions well definable by the scientific community does not justify the relative delay in preventive action of the risk that is serious.

¹⁰COP, Convention on Biological Diversity, Biodiversity and climate change and disaster risk reduction, Decision XII/20, 2014. COP Convention on Biological Diversity, Biodiversity and climate change, Decision X/33, 2010; COP Convention on Biological Diversity, Biodiversity and climate change, Decision XIII/4, 2016.

¹¹ECtHR, Union of Swiss senior women for climate protection v. Swiss of 26 November 2020. Sacchi and others v. France and others of 8 October 2021, par. 10.13

This type of risk anticipates preventive action, that comes through a balance, ensures the protection of human rights, the environment and the appreciation of states in the management of internal affairs. The severity of the risk determines each case that does not risk climate change, does not lose biodiversity and combines exposure to a dangerous event with conditions that have to do with vulnerability as serious and that justify the adoption of precautionary measures.

The relative obstacles to the holistic approach in international law risks

Prevailing prevention and reactive according to the general prevention obligations is an obstacle, that concerns the activity, that derives from damage. Respect for the risks of even serious damage overcomes the reactive approach.

On the other hand, the pre-eminence is calculated and comes from international law according to the risk that arrives is an obstacle for each individual activity that derives from a physical, dangerous event, such as for example in the case of an accident, a natural disaster, etc.¹².

This orientation obliges and faces the risks of industrial activities. Thus prevention causes natural disasters by presenting the cause of the disaster of the actions, that give rise to

¹²IPCC, Climate change: new dimensions in disaster risk, exposure, vulnerability, and resilience, op. cit., p. 150.

vulnerability, to the exposure to risks. Respecting natural disasters means respecting the international responsibility of each state, that derives from negligence, thus reducing the exposure to risks and physical events of a dangerous nature. Vulnerability conditions impact disasters, thus recognizing a causal link between vulnerabilities, that determines the structural conditions of society, the disaster for example that we have noted from the jurisprudence of the Inter American Court of Human Rights (IACtHR) in the Fireworks Factory Workers case (Tuffi Saliba, Ferolla Vallandro do Valle, 2021)¹³.

In this case it was decided:

“(...) the state involved was held responsible for the disaster not only for the negligence in supervising the implementation of safety measures within the industrial plant from which the accident had arisen, but also for the poverty in which the workers found themselves (...) social and environmental vulnerabilities and disaster risks are also highlighted in international practice in the field of environmental protection (...)”.

The Paris Agreement provides that for the purposes of adapting to climate change, states must reduce the vulnerabilities of society and the environment with respect to the impact of this phenomenon. The impact of the action of states on the vulnerability of people and the environment to disasters has also been recognized in the acts of the COPs established by the biodiversity treaties¹⁴.

¹³IACtHR, Workers of the fireworks factory in Santo Antonio de Jesus and their families v. Brazil of 20 October 2016, Serie C n. 407: https://www.corteidh.or.cr/docs/casos/articulos/seriec_407_ing.pdf

¹⁴COP, Convention on Biological Diversity, Biodiversity and climate change and disaster risk reduction, Decision XII/20, 2014. COP Convention of Ramsar, The

The path of the holistic approach that is foreseen in soft law acts and in the field of disaster risk reduction, as disaster prevention obligations, that derive from international law and human rights of the environment, notes that the physical event that cause the disaster goes towards the development of a practice, that recognizes the vulnerability and the exposure of the related disasters, as factors of every risk. The prevention obligations deal with activities that give rise to the dangerous event, that derives from the vulnerabilities and the exposure to risks.

Natural and anthropogenic disasters. Uniformity or non-application of natural disasters?

The characteristic of the event is the direct cause of the damage that gives rise to the distinction between natural and anthropogenic disasters in international human rights and environmental law (Tladi, 2017; Rainey, Wicks, Ovey 2021; Liakopoulos, 2020b)¹⁵.

Respecting the risks of disaster that derive from natural events is a preventive action that reduces the emergency plans which

impact of natural disasters, particularly drought, on wetland ecosystems, Resolution VIII.35, 2002. COP Convention di Ramsar, Wetlands and disaster risk reduction, Resolution XII.13, 2015, par. 5.

¹⁵ECtHR, Budayeva v. Russia of 29 September 2009, par. 173-174. IACHR, Workers of the fireworks factory in Santo Antonio de Jesus and their families v. Brazil of 20 October 2016, op. cit., par. 190. UNEP, Further improvement of environmental emergency prevention, preparedness, assessment, response and mitigation, UNEP/GC.22/INF/5, 13 November 2002, par. 3. ILC, Draft articles on prevention of transboundary harm from hazardous activities, with commentaries, 53^o section, UN Doc. A/56/10, 2001, art. 28, par. 1.

activate the natural event of imminent nature (Liakopoulos, 2020b)¹⁶. This type of imminence evaluates the criteria of statistics, where the event for a given period determines the area that is recurrent¹⁷. Preventive action requires natural events of a severity¹⁸, that determines the basis of the legal asset, that is at risk.

Diligence for the prevention of natural disaster threatens the enjoyment of the right, that respects the risk for the protection of the right to life. A factor that does not detect the disaster of human origin. An orientation that consolidates the strength of the disasters, that are created by the impact of a natural event of an industrial activity, that considers the human origin¹⁹.

The risks of disaster, where the state decides to carry out the dangerous industrial activity, include the combination of exposure and natural events (Etamire, 2023)²⁰ resulting in the

16ILC, Draft articles on prevention of transboundary harm from hazardous activities, with commentaries, 53^o section, UN Doc. A/56/10, 2001, art. 16. Convention on the law of the non-navigational uses of international watercourses, adopted in New York on 21 May 1997, entered into force on 17 August 2014, with 37 states parties, art. 28, par. 4. Convention on nuclear safety, adopted in Vienna on 17 June 1994, entered into force on 14 October 1996, with 78 states parties. Convention on the transboundary effects of industrial accidents, adopted in Helsinki on 17 March 1992, entered into force on 19 April 2000, with 41 states parties, art. 2. Annex I; Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC Text with EEA relevance, OJ L 197, 24.7.2012, Annex I; Basel convention on the control of transboundary movements of hazardous wastes and their disposal, adopted in Basel on 22 March 1989, entered into force on 5 May 1992, with 189 states parties.

17ECtHR, Budayeva v. Russia, op. cit., par. 137.

18ECtHR, Hadzhiyska v. Bulgaria of 15 May 2012, par. 16.

19ECtHR, Kolyadenko v. Russia of 28 February 2012, par. 164.

20ILC, Draft articles on prevention of transboundary harm from hazardous

damages, that the impact of the natural event causes and the industrial activity that is part of the state controls and exercises the activity. The incidence of environmental and social vulnerabilities on the risks of disaster also show in practice the development of a precaution and prevention of natural disasters. This is a recognition that is based on non-discrimination by obliging and preventing, reducing the vulnerability of social origin by affecting the severity of effects produced by natural events. Effects that involve the responsibility of the states and fall on the products of industrial activities that are dangerous for the precautionary approach that is affirmed.

The lack of measures that referring to protection of the environment and natural disasters are components that do not contribute to the reduction of vulnerabilities, the types of disaster, the possible catastrophic effects that are products of a natural event that are attributed to the state. These are examples, that affirm the obligations, that reduce, prevent social and environmental vulnerabilities to disasters leading to the development of a precautionary approach for the prevention of natural disasters. Such trends are consolidated for the prevention

activities, with commentaries, 53^o section, UN Doc. A/56/10, 2001, art. 1. Regional agreement on access to information, public participation and justice in environmental matters in Latin America and the Caribbean (Escazú Agreement), adopted in Escazú on 4 March 2018, entered into force on 22 April 2021, with 12 states parties; Convention on environmental impact assessment in a transboundary context (EIA Convention), adopted in Espoo on 25 February 1992, entered into force on 10 September 1997, with 45 states parties.

of natural and man-made disasters and at the same time are the progress of a holistic approach to the risks of disaster aware of an impact of human action of people, the environment and the risks of natural disasters.

Procedural obligations and precautionary prevention

Talking about precaution means taking into account the risks of the related decision-making processes, that are related to the activity, that derives from damage to a protected legal asset (Boisson De Chazournes, 2010). The related jurisprudence and international instruments related to the precautionary approach respect the requirements that are minimal, relative to the decision-making process considering as adequate the realization of the dangerous activity to the potential existing risks (Cogan, 2016; Villiger, 2023)²¹. These requirements consider as

²¹ECtHR, *Taşkin v. Turkey* of 30 March 2005, par. 118-119. *Dubetska v. Ukraine* of 10 February 2011, par. 142-143. IACHR, *The environment and human rights*, advisory opinion of 15 November 2017, OC-23/17, par. 211ss. ICJ, *Certain activities carried out by Nicaragua in the border Area (Costa Rica v. Nicaragua)*, sentence of 16 December 2015, par. 104: “(...) to fulfill its obligation to exercise due diligence in preventing significant transboundary environmental harm, a state must, before embarking on an activity having the potential adversely to affect the environment of another state, ascertain if there is a risk of significant transboundary harm, which would trigger the requirement to carry out an environmental impact assessment (...)”. ITLOS, *Advisory opinion on responsibilities and obligations in the Area*, (Request for Advisory opinion submitted to the seabed disputes Chamber) List of cases: No. 17 Advisory opinion of 1st February 2011, par. 121-122. https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/17_adv_op_01021_1_en.pdf Cartagena protocol on biosafety-Convention on biological safety, adopted in Montreal on May 16, 2000, entered into force on September 11, 2003, with 173 states parties, art. 10, par. 6. Aarhus Convention was adopted of 25 June 1998, art. 5, par. 1(c). <https://unece.org/environment-policy/public-participation/aarhus-convention/introduction> Regional agreement on access to information, public participation and

necessary the conduct of the state, that is compliant with the prevention obligations. Precaution has a stable minimum content (Kerbrat, 2018).

The content and the obligation of due diligence that comes from the state that does not adopt the measures, that are procedural, allows the conduct, that is contrary to international law, unless the state does not adequately justify its behavior. Procedural measures include measures, that do not require the capacity of factors, that are random and that escape the relative control of the state itself.

The content of due diligence produces the related positive effects and makes predictable the fate of the obligation, that results in the interpretation of the norms of a general nature and facilitates the work of the interpreter in case of defects in a decision-making process, that can condemn the state without carrying out an examination of the choices made by the state itself²².

The international obligations relating to due diligence include a content pre-established, through the interpretation that has been made by national courts and international tribunals, representing

justice in environmental matters in Latin America and the Caribbean (Escazú Agreement), adopted in Escazú on 4 March 2018, entered into force on 22 April 2021, with 12 states parties; Convention on environmental impact assessment in a transboundary context (EIA Convention), adopted in Espoo on 25 February 1992, entered into force on 10 September 1997, with 45 states parties.

²²ECtHR, Taşkin v. Turkey, op. cit., par. 118. Dubetska v. Ukraine, op. cit., par. 142.

an obligation that provides for environmental damage. These obligations recognize the implementation of procedural measures by each state, that constitutes the relative presumption of its negligence in preventing the related damage to the environment (Voigt, 2019; Liakopoulos, 2020)²³. This type of measures are adequate for the protection of the environment and the consensus, that is manifested by the states²⁴.

To such disasters are applied the principles, that are developed in the field of international environmental law around the provision of measures, that have a procedural character²⁵. The elements in force of the consensus, that emerges on the need to adopt the relevant procedural measures, have as their objective to prevent the relevant disasters of a natural nature. The procedural measures, that are required for the precaution of disasters form the vulnerability and exposure to risks, that produce the relative effects of the procedural measures, that are required for the prevention of disasters, have an anthropic nature.

23ICJ, Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2006-2010, par. 204.

24ICJ, Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2006-2010, par. 29: "(...) which in recent years has gained so much acceptance among states (...)".

25IACHR, The environment and human rights, op. cit., par. 141ss. CCPR, General comment n. 36, CCPR/C/GC/36, 3 September 2019, par. 62; CCPR, Concluding observations Capo Verde CCPR/C/CPV/CO/1/Add.1, 3 December 2019, par. 18. ECtHR, Guerra v. Italy of 19 February 1998, par. 60 and case Tătar v. Romania of 6 June 2009, par. 122.

Assessment and identification of risks related to the disaster

The procedures that identify, assess the risks of disaster, as procedures, that determine the risks, that are exposed to individuals, property, human rights, the environment are acceptable to adopt prevention measures. Identifying, assessing risks in international environmental law is the minimum of an obligation, that provides for environmental damage of a transboundary nature²⁶ stating, that the protection of the environment as such²⁷, is interpreted in the obligations of protection of human rights and in situations of environmental damage²⁸.

Already the same jurisprudence of human rights identifies and

26ICJ, Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2006-2010, par. 204. ILC, Draft articles on the protection of persons in the event of disasters with commentaries, 68^o session, UN doc. A/71/10, 2016: https://legal.un.org/ilc/texts/instruments/english/draft_articles/6_3_2016.pdf, art. 9, art. 3: “(...) 1. Each state shall reduce the risk of disasters by taking appropriate measures, including through legislation and regulations, to prevent, mitigate, and prepare for disasters; 2. Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems; (...)”. ICJ, Certain activities carried out by Nicaragua in the border Area (Costa Rica v. Nicaragua), sentence of 16 December 2015, par. 104. ITLOS, Advisory opinion on responsibilities and obligations in the Area, (Request for Advisory opinion submitted to the seabed disputes Chamber) List of cases: No. 17 Advisory opinion of 1st February 2011, par. 121- 122, 125-127, 131.

https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/17_adv_op_010211_en.pdf

27Regional agreement on access to information, public participation and justice in environmental matters in Latin America and the Caribbean (Escazú Agreement), adopted in Escazú on 4 March 2018, entered into force on 22 April 2021, with 12 states parties; Convention on environmental impact assessment in a transboundary context (EIA Convention), adopted in Espoo on 25 February 1992, entered into force on 10 September 1997, with 45 states parties.

28IACtHR, The environment and human rights, op. cit., par. 158; CCPR, General comment n. 36, op. cit., par. 62.

assesses the risks in dangerous activities, as measures that are indispensable for the conduct of the state, that considers as compliant the obligation of prevention of violations of human rights²⁹.

Already industrial activities have a dangerous nature relating to operations, that derive from accidents and events, that are harmful³⁰. This type of danger before authorizing the continuous work of an industrial activity must carry out a risk assessment procedure. The procedure is determined at the level of international law in a general way³¹ and in practice it emerges from the dangers, that take into account the final decision essential for the same activity, that derive from events, that have an adverse character (Sands, Peel, Fabra, MacKenzie, 2018)³².

The severity of the risk is determined on the basis and characteristics of a dangerous event. The holistic approach to disaster risks emerges from the trends, that are relevant with the identification measures and the assessment of risks as trends,

²⁹ECtHR, Taşkın v. Turkey, op. cit., par. 113, 119; Kolyadenko and others v. Russia, op. cit., par. 166, 173; Dubetska and others v. Ukraine, op. cit., par. 143; IACtHR, The environment and human rights, op. cit., par. 156.

³⁰ECtHR, Önerildiz v. Turkey of 30 November 2004, par. 71.

³¹ICJ, Pulp Mills on the River Uruguay (Argentina v. Uruguay), 2006-2010, par. 204: "(...) is for each state to determine in its domestic legislation or in the authorization process for the project, the specific content of the environmental impact assessment (...)". ICJ, Certain activities carried out by Nicaragua in the border Area (Costa Rica v. Nicaragua), sentence of 16 December 2015, par. 104: "Determination of the content of the environmental impact assessment should be made in light of the specific circumstances of each case (...)". ILC, Draft articles on the protection of persons in the event of disasters with commentaries, op. cit., art. 7, lett. 5.

³²UNEP, Goals and principles of environmental impact assessment, op. cit.

that are not part of those of the circle of the developing way.

The main trend of risk assessment emerges from tools, that ask the procedure for a phase prior to the release of the authorization exercise and of dangerous activities, such as the implementation of plans, programs, that derive from risks for the environment. So we are referring to the strategic impact assessment, which is not the same and which is different from the environmental impact assessment before the single activity to the plans, programs is approved³³. So the application of a factorial approach is favored in case the risk allows to take into consideration the various causes of the risk³⁴.

Another development takes into account the activities that are dangerous and require a prior assessment of the related risks. This trend recognizes the dangerousness of the activities, that arise from physical events and exposure to the risks of a disaster. The activity of this type implements the management of the territory and urban development³⁵. Such authorization of this

³³Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, 21 July 2001. Protocol on strategic environmental assessment to the convention on environmental impact assessment in a transboundary context, adopted in Kiev on 21 May 2003, entered into force on 11 July 2010, with 33 states parties. Protocol on strategic environmental assessment to the convention on environmental impact assessment in a transboundary context, adopted in Kiev on 21 May 2003, entered into force on 11 July 2010, with 33 states parties.

³⁴EU, Strategic environmental assessment, 2030: <https://www.compete2030.gov.pt/en/strategic-environmental-assessment/>

³⁵ECtHR, Özel and others v. Turkey of 2 May 2016, par. 174; Vladimirov v. Bulgaria of 28 September 2018, par. 40. Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances (Seveso III Directive), 4 July 2012, art. 13, par. 1.

type of activity recognizes the obligation to carry out a prior assessment of the risks³⁶. The related disaster risks take into account the choice, that implements the management in the territory of an urban development, within an industrial activity of housing, of structures that have to do with human use³⁷ and exposure to natural events in adverse areas³⁸.

Soft law acts in the field of disaster risk reduction take into consideration dangerous events, vulnerability and exposure to risks³⁹. Instead, in international human rights and environmental law, the orientation of risks, that are inherent to the activities, that derive from the dangerous event, tend to emerge from the attribution of relevance, with external factors of dangerous activity. The practice of risk assessment takes into consideration the impact, the natural events, that are recurrent in the area of industrial activity of a dangerous nature⁴⁰.

The procedure of risk assessment and control, the related developments between vulnerability and disasters note that in

36ECtHR, *Budayeva and others v. Russia* of 29 September 2009, par. 132.

37ECtHR, *Kolyadenko and others v. Russia*, op. cit., par. 168; CESCR, General comment n. 4: the right to adequate housing, 1991, (Art. 11 (1) of the Covenant), E/1992/23, 13 December 1991, par. 8.

38ECtHR, *Vladimirov v. Bulgaria*, op. cit., par. 40.

39Sendai framework, op. cit., par. 23.

40Regional agreement on access to information, public participation and justice in environmental matters in Latin America and the Caribbean (Escazú Agreement), adopted in Escazú on 4 March 2018, entered into force on 22 April 2021, with 12 states parties; Convention on environmental impact assessment in a transboundary context (EIA Convention), adopted in Espoo on 25 February 1992, entered into force on 10 September 1997, with 45 states parties, art. 3, par. 2. ILC, Draft articles on prevention of transboundary harm, op. cit., art. 1, lett. 15.

the context of international law and human rights the conditions of vulnerability have a social and environmental nature, as well as the same prejudicial effects for the related dangerous event. This recognition leads to states greater diligence for the related protection of disaster risks for people, components of the environment that are vulnerable. The provision of a standard of due diligence is onerous for states that take into account the vulnerability of their risk management decisions⁴¹.

Thus preventive measures are adopted. They are adequate for the integration and the specific needs for the protection related to the risks of disaster, the effects on the prevention obligations. The assessment of the probability and the severity of the disaster determine the basis of a scientific knowledge for the dangerous event of a qualitative analysis, that takes into account the effects produced by the event of the conditions of society and the environment that has the relative impact⁴².

The characteristic of the event is not a risk of serious damage and individuals are exposed to particular conditions of vulnerability acting in a preventive way. Vulnerability brings the

41CRC, Concluding observations Federated States of Micronesia, 2020, CRC/C/FSM/CO/2, 3 April 2020, par. 57; CRC, Concluding observations Tuvalu, 2020 CRC/C/TUV/CO/2-5, 31 March 2020, par. 43; CRC, Concluding observation Serbia, 2017, CRC/C/SRB/CO/2-3, 3 February 2017, par. 53; CRPD, Concluding observations Turkey, 2019, CRPD/C/TUR/CO/1, 1 October 2019, par. 23; CEDAW, General recommendation n. 28, on gender-related dimensions of disaster risk reduction in the context of climate change, CEDAW/C/GC/37, 7 February 2018, par. 39.

42IPCC, Climate change: new dimensions in disaster risk, exposure, vulnerability, and resilience, op. cit., p. 37.

obligation of prevention and the vulnerability of the state abstains from any preventive action. The event constitutes a risk of serious damage and the capacity of individuals resists and the environment reduces the possibility of an event that derives from prejudicial effects. In this case the element of vulnerability justifies the relative inaction of the state.

Information for the dissemination of disaster risks

Access to information on disaster risks is an example of concrete measures, that states adopt their own conduct, that is adequate to fulfill the obligations of prevention of disasters, which are imposed by international human rights and environmental law.

The related measures are accessible to disseminate information on disaster risks, that are part of international environmental law with the aim of allowing transboundary states to threaten the dangerous activity of state authorities in their territory, where the opportunity to carry out that activity is realized⁴³. In times of risks that cause imminent damage, the dissemination of information on the risks of transboundary states aims to warn of the relative risk and to prepare the response in advance⁴⁴. The

⁴³ILC, Draft articles on prevention of transboundary harm, op. cit., art. 8. Convention on the law of the non-navigational uses of international watercourses, op. cit., art. 11. Lake Lanoux Arbitration (Francia v. Spagna), RIAA 281, 16 November 1957, par. 17. ICJ, Certain activities carried out by Nicaragua in the border Area (Costa Rica v. Nicaragua), op. cit., par. 108.

⁴⁴Convention on the transboundary effects of industrial accidents, op. cit., art. 10;

evolution of international law on environmental protection tends to proceduralize the related measures to information on risks, that are essential for the prevention of environmental damage (Brun  e, 2021).

In this case, individuals are the beneficiaries of information. Measures that are accessible and that disseminate information on risks, are part of environmental treaties as an essential point of protection of human rights (Sands, Peel, Fabra, MacKenzie, 2018).

In the industrial sector, states must guarantee the relative right to access information on risks, that are related to a future disaster⁴⁵. As objectives are choices, that have an impact on the environment, health allowing public participation in decision-making processes. In international human rights law, the objective of guaranteeing the risks to which they are exposed in order to choose the best living conditions, is a daily reality⁴⁶.

The issue of access to information and to those who have an interest is very important, especially, for the European Court of Human Rights (ECtHR), which goes beyond the autonomous

Convention on the law of the non-navigational uses of international watercourses, op. cit., art. 28, par. 2.

⁴⁵Convention of Aarhus, op. cit., art. 4, par. 1. Convention for the protection of the marine environment of the North-East Atlantic (OSPAR Convention), adopted in Paris on 22 September 1992, entered into force on 29 March 1998, with 16 states parties, art. 2, par. 2(a), art. 9. Directive Seveso III, op. cit., art. 15, par. 2. Convention of Escaz  , op. cit., art. 5, par. 2. IACtHR, Human rights and the environment, advisory opinion par. 214.

⁴⁶ECtHR, Di Sarno and others v. Italy of 10 January 2012, par. 107 and T  tar v. Romania of 6 July 2009, par. 113.

right of access to information, as an instrumental right for the protection of the rights, established by the convention⁴⁷.

Some instruments provide for the obligation to make accessible the relevant information, that has to do with the environment in general⁴⁸. Refusing access to information limits the reasons, that are legitimate and that must be interpreted restrictively⁴⁹.

Access to information that relates to risks has a broad scope, that respects the dissemination of information. Such dissemination is essential for disaster risks, the relevant objective, that enables an emergency response⁵⁰. People who are exposed to risk are the relative beneficiaries for information⁵¹. The dissemination of

47ECtHR, *McGinley and Egan v. the United Kingdom* of 9 June 1998, par. 101 and *Tătar v. Romania*, op. cit., par. 113.

48Convention of Aarhus, op. cit., art. 5, par. 1; Convention of Escazú, cit., art. 6.

49Convention of Aarhus, op. cit., art. 4, par. 3. Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC. OJ L 41, 14.2.2003, art. 5, par. 7.

50Convention of Escazú, op. cit., art. 6, par. 5. Convention of Aarhus, op. cit., art. 5, par. 1(c). ECtHR, *Budayeva v. Russia*, op. cit.

51Directive of Seveso III, op. cit., art. 14, par. 2. Convention on the transboundary effects of industrial accidents, op. cit., art. 9. Convention on nuclear safety, adopted in Vienna on 17 June 1994, entered into force on 14 October 1996, with 78 states parties. Convention on the transboundary effects of industrial accidents, adopted in Helsinki on 17 March 1992, entered into force on 19 April 2000, with 41 states parties, art. 2. Annex I, art. 16, par. 2; Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC Text with EEA relevance, OJ L 197, 24.7.2012, Annex I; Basel convention on the control of transboundary movements of hazardous wastes and their disposal, adopted in Basel on 22 March 1989, entered into force on 5 May 1992, with 189 states parties. ILC, Draft articles on prevention of transboundary harm, op. cit., art. 13. Convention of Aarhus, op. cit., art. 5, par. 1(c). EIA Convention, op. cit., art. 3, par. 8. Convention concerning the prevention of major industrial accidents (ILO Convention), adopted in Geneva on June 22, 1993, entered into force on January 3, 1997, with 18 states party, art. 3(b). Convention of Escazú, op. cit., art. 6, par. 1 and par. 5. ILC, Draft articles on prevention of transboundary harm, op. cit., art. 13, lett. 2.

information that relates to disaster risks calls the relationship of natural disaster risks⁵².

Natural events and developments, that concern vulnerability and disasters emerge from trends, that have an impact on measures regarding information on disaster risks. The elements, that derive from the obligation to ensure access to the relevant information, are elements, that derive from the obligation to ensure access to information, especially, for risks to industrial activities and related natural disaster risks. Thus, states will have to ensure individuals access to information related to social and environmental vulnerabilities, such as natural events that are caused by climate change.

In the Vladimirov case, from the ECtHR, access to information, which was related with the risks of natural disaster is recognized against the state, which is liable for the related damages, which are suffered by the property and due to the fact that the applicant had decided to start his own business after he had information about the related environmental damages, disasters in the area, which was exposed⁵³.

Disaster information also has a mandatory nature of dissemination. The function of such measures that performs disaster prevention, as a consequence of reducing vulnerabilities

⁵²IACtHR, The environment and human rights, consultive opinion, op. cit., par. 222; ECtHR, Budayeva v. Russia, op. cit., par. 152.

⁵³ECtHR, Vladimirov v. Bulgaria, op. cit., par. 37.

and the disaster community continues the objective of information that provides limits to imminent risks.

In the Tătar case the ECtHR noted that:

“(...) state had to provide the population that had been affected by the disaster, and that for this reason was in a condition of anguish and anxiety, all information on future risks and existing measures to prevent them⁵⁴ (...) recognition of the importance of disseminating information on risks for the purpose of reducing vulnerabilities has also been had by the monitoring committees of the human rights treaties adopted within the UN (...) in accordance with what is indicated in the Sendai framework⁵⁵, they also underlined the importance of increasing knowledge on disasters of the most vulnerable categories of people (...)”⁵⁶.

Involving vulnerable stakeholders in decision-making processes related to disaster risk reduction provides and ensures access to information on risks that are specific⁵⁷.

Decision-making processes and public participation

States are responsible for adopting their disaster prevention obligations in mechanisms that ensure public participation in decision-making processes. This obligation manages risks, that take into account the opinions of individuals, who are threatened by the related risk.

This measure allows society to contribute a certain level of acceptable risk, thus, increasing the legitimacy of choices in risk

⁵⁴ECtHR, Tătar v. Romania, op. cit., par. 122.

⁵⁵Sendai framework, par. 36(ii).

⁵⁶CRC, Concluding observations Micronesia, 2020, op. cit., par. 57; CRC, Concluding observations Mozambique, 2019 CRC/C/MOZ/CO/3-4, 27 November 2019, par. 37.

⁵⁷CRPD, Concluding observations Saudi Arabia, 2019, CRPD/C/SAU/CO/1, 13 May 2019, par. 20. CEDAW, General recommendation n. 37, cit., par. 60(c).

management and its effectiveness (Boisson de Chazournes, 2010).

The first sector that had the need to identify actions to regulate non-specific risks was that of international environmental law. This is a measure that has been provided for by a plurality of treaties in the field of environmental protection by identifying the minimum requirements for the procedure, that respects participation considered, as effective. It is an indispensable measure the conduct of the state that judges as compliant its due diligence obligations⁵⁸. The practice that is before participation guarantees those, that affect the risks after the relevant information of the opportunity, that provides in good time the opinion, that produces the effects of the final decision⁵⁹.

The obligation to ensure participation and to allow access to information on risks before a future disaster allows for some important steps to be taken first⁶⁰. After the collection of evidence and the appropriate modalities⁶¹ the relevant authorities will have to take into consideration a final decision specifying, that the opinions collected have justified the divergence from a

⁵⁸ECtHR, *Dubetska and others v. Ukraine*, op. cit., par. 143 and *Grimkovskaya v. Ukraine* of 21 July 2011, par. 69.

⁵⁹ECtHR, *Dubetska and others v. Ukraine*, op. cit., par. 143. Convention of Aarhus, op. cit., art. 6. Directive Seveso III, op. cit., art. 15. Convention on the transboundary effects of industrial accidents, op. cit., Annex 7.

⁶⁰Directive Seveso III, op. cit., art. 15, par. 3. Convention of Aarhus, op. cit., art. 6, par. 6. Convention on the transboundary effects of industrial accidents, op. cit., art. 9 par. 2 and Annex VIII.

⁶¹Convention of Escazú, op. cit., art. 7, par. 7. Convention of Aarhus, op. cit., art. 6, par. 7.

final decision, that is guaranteed by the procedure of an appeal⁶². The Aarhus Convention already guarantees public participation in the processes for the formation of laws and regulations, that precede a final approval of plans and programs⁶³. Developments that concern the subjects will have to be listened to.

The prevailing practice is limited to the obligation towards the subjects, who are affected by the risk as can be seen from the Escazù Convention, that has recognized and taken part in decision-making processes in the environmental sector⁶⁴. In the sector of vulnerable people the soft law instruments, that reduce the risk of disasters in the monitoring bodies, in the field of human rights, are concluded within the UN framework⁶⁵ as well

⁶²IACtHR, The environment and human rights, advisory opinion, op. cit., par. 242. Directive of Seveso III, op. cit., art. 15, par. 4; Convention of Aarhus, op. cit., art. 6, par. 8 and 9. Convention of Escazù, op. cit., art. 7, par. 8.

⁶³Convention of Aarhus, op. cit., art. 8: “(...) each Party shall strive to promote effective public participation (...) during the preparation by public authorities of executive regulations and other generally applicable legally binding rules (...)”.

⁶⁴Convention of Escazù, op. cit., art. 7: “(...) each Party shall ensure the public’s right to participation (...)”.

⁶⁵CRC, Concluding observations the Cook Islands, 2020, CRC/C/COK/CO/2-5, 2 April 2020, par. 44; CRC, Concluding observations Tuvalu, 2020, op. cit., par. 42; CRC, Concluding observations Australia, 2019, CRPD/C/AUS/CO/2-3, 15 October 2019, par. 41; CRC, Concluding observations New Zealand, 2016, CRC/C/NZL/CO/5, 21 October 2016, par. 34(a); CRPD, Concluding observations India, 2019, CRPD/C/IND/CO/1, 29 October 2019, par. 25; CRPD, Concluding observations Kuwait, 2019, CRPD/C/KWT/CO/1, 18 October 2019, par. 23; CRPD, Concluding observations Australia, 2019, op. cit., par. 21; CRPD, Concluding observations Albania, 2019, CRPD/C/ALB/CO/1, 14 October 2019, par. 22; CRPD, Concluding observations El Salvador, 2019, CRPD/C/SLV/CO/2-3, 1 October 2019, par. 22; CRPD, Concluding observations Turkey, 2019, CRPD/C/TUR/CO/1, 1 October 2019, par. 23; CEDAW, Concluding observations Eritrea, 2020, CEDAW/C/ERI/CO/6, 10 March 2020, par. 50; CEDAW, Concluding observations Seychelles, 2019, CEDAW/C/SYC/CO/6, 12 November 2019, par. 46; CEDAW, Concluding observations Cabo Verde, 2019, CEDAW/C/CPV/CO/9, 30 July 2019, par. 37; CEDAW, Concluding observations Guyana, 2019, CEDAW/C/GUY/CO/9,

as the instruments in the field of the environment⁶⁶.

Subjects who are vulnerable and according to their specific needs consider decisions on the management of related risks and disasters. Vulnerable groups also cover indigenous peoples, where their participation in decision-making processes concerns activities that have an impact on their territory and guarantee the strength of the property rights they enjoy in their lands⁶⁷.

Public participation that has to do with decision-making processes and human activities, that are dangerous for the environment, extends the obligation to activities, that may have an impact on the risks of natural disasters. This is a statement that is based on the Paris Agreement, which affirms that:

“(...) action to adapt to climate change should be based on a gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups⁶⁸ (...) to mitigate the impact of natural events linked to climate change. States should allow the participation of interested parties, paying particular attention to the most vulnerable categories of people (...) human rights treaty monitoring bodies recommend that states ensure the participation of vulnerable parties in decision-making processes regarding adaptation to climate change and disaster risk reduction, without making a distinction between natural and anthropogenic disasters (...)”

30 July 2019, par. 42; CEDAW, General recommendation n. 37, op. cit., p. 8.

⁶⁶Convention of Escazú, op. cit., art. 5, par. 3.

⁶⁷IACtHR, Saramaka people v. Suriname of 28 November 2007, Serie C n. 172, par. 129; Sawhoyamaya Indigenous Community v. Paraguay (Our land) association v. Argentina of 6 February 2020, Serie C n. 400, par. 93; Kaliña and Lokono Peoples v. Suriname of 25 November 2015, par. 202, 203, 230; Indigenous communities of the Lhaka Honhat v. Argentina of 6 February 2020, Serie C n. 400, par. 93, 173-174.

⁶⁸Paris Agreement-United Nations Framework Convention on Climate Change, adopted in Paris on 22 April 2015, entered into force on 4 November 2016, with 189 states parties, art. 8. COP UNFCCC, The Glasgow climate pact, 2021: <https://ukcop26.org/wp-content/uploads/2021/11/COP26-Presidency-Outcomes-The-Climate-Pact.pdf>, art. 7, par. 5.

(Knox, 2020)⁶⁹.

(Follows): Emergency plans

Emergency plans aim to prepare projects in the event of an emergency that cannot be avoided. The aim is the future intervention of developments, that concerns the concepts of vulnerability and exposure to risks, as the only preventive measures, that are foreseen for natural disasters for their own preparation⁷⁰.

Emergency plans concern and take into account the predisposed for risk management and industrial activities. An emergency plan constitutes the alarm systems, where the states have their own monitoring of risks and in the condition, that the disaster becomes imminent. Thus the means for diffusion and alarm and evacuation are prepared⁷¹.

The soft law instruments in the field of disaster risk reduction assert the force, the methods of diffusion of the news of the imminence of the disaster and the evacuation, that takes into account the specific needs of vulnerable people. Help for disabled people is a difficult sector to be all prepared in a perfect

⁶⁹CCPR, Concluding observations Cabo Verde, 2019, op. cit., par. 17-18; CESCR, Concluding observations Bangladesh, 2018, E/C.12/BGD/CO/1, 18 April 2018, par. 14.

⁷⁰CCPR, General comment n. 36, cit., par. 26.

⁷¹ECtHR, Budayeva and others v. Russia, op. cit., par. 154. Directive of Seveso III, op. cit., Annex IV. Convention on the transboundary effects of industrial accidents, op. cit., Annex VII. Convention concerning the prevention of major industrial accidents (ILO Convention), adopted in Geneva on June 22, 1993, entered into force on 3 January 1997, with 18 states party, art. 9(d) and art. 16.

way⁷². Hazardous industrial activities and emergency plans are reviewed to adapt the activity characteristics to new discoveries, in the scientific field⁷³.

Soft law acts, legal effects in the field of disaster risk reduction and international protection of human rights

The Sendai framework has influenced the monitoring bodies, that are established by the human rights treaties, that are concluded within the UN. The adoption of acts, that are part of the bodies of references to the Sendai framework, refers directly to this instrument⁷⁴.

Instead, indirectly, the reference of the concept of disaster risk reduction⁷⁵, through the Sendai framework, refers to the monitoring bodies on the human rights treaties, thus specifying the measures that states adopt and reduce the vulnerability of communities to disasters as well as, for example, to climate

⁷²CRPD, Concluding observations Kenya, 2015, CRPD/C/KEN/CO/1, 30 September 2015, par. 22; CRPD, Concluding observations Chile, 2016, CRP/CHL/CO/1, 13 April 2016, par. 22; CRPD, Concluding observations Plurinational State of Bolivia, 2016, CRPD/C/BOL/CO/1, 4 November 2016, par. 26.

⁷³Directive of Seveso III, op. cit., art. 12, par. 6. Convention on the transboundary effects of industrial accidents, op. cit., art. 8, par. 4. Convention of ILO, op. cit., art. 9(d) and art. 15.

⁷⁴CRPD, Concluding observations Greece, 2019, CRPD/C/GRC/CO/1, 29 October 2019, par. 15; CRPD, Concluding observations India, 2019, CRPD/C/IND/CO/1, 29 October 2019, par. 25; CRPD, Concluding observations Iraq, 2019, CRPD/C/IRQ/CO/1, 23 October 2019, par. 22; CEDAW, General recommendation n. 37, op. cit., par. 16.

⁷⁵CRC, Concluding observations Cook Islands, 2020, CRC/C/COK/CO/2-5, 2 April 2020, par. 44; CESCR, Concluding observation Mauritius, 2019, E/C.12/MUS/CO/5, 5 April 2019, par. 10.

change⁷⁶.

The Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC) have many times taken into consideration the Sendai framework⁷⁷ and the interpretation of treaties (Gammeltoft-Hansen, Lagoutte, Cerone, 2016), as a feature of soft law instruments, which is recognized by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), which notes:

“(...) the Sendai framework should be read together with the provisions of the Convention (...)”⁷⁸.

The soft law instruments on disaster risk reduction are also connected with the jurisprudence of regional courts. The decisions do not refer to the soft law acts and disaster risk reduction. Particularly, in the *Özel* case from the ECtHR it was stated:

“(...) an approach to the prevention of natural disasters more advanced than that adopted in the *Budayeva* case of 2008 (...) to provide for an obligation to mitigate the effects of the natural event⁷⁹, in the *Özel* case it recognized an obligation to reinforce the state’s capacity to deal with the unexpected and violent (...) natural phenomena (...)”⁸⁰.

⁷⁶Human Rights Council, Report of the Special rapporteur on the issue of human rights obligations relating to the enjoyment of a healthy and sustainable environment, A/HRC/43/53, 30 December 2019, par. 86.

⁷⁷CESCR, Concluding observation Mauritius, 2019, op. cit., par. 10; CESCR, Concluding observations Bangladesh, 2018, op. cit., par. 14; CRC, Concluding observations Cook Islands, 2020, op. cit., par. 44; CRC, Concluding observations Tuvalu, 2020, cit., par. 42; CRC, Concluding observations Mozambique, 2019, op. cit., par. 37.

⁷⁸CEDAW, General recommendation n. 37, op. cit., par. 16.

⁷⁹ECtHR, *Budayeva and others v. Russia*, op. cit., par. 137.

⁸⁰ECtHR, *Özel and others v. Turkey*, op. cit., par. 173.

The risks of disaster recommended by the soft law instruments, to the extent that it recognizes how the state, by reducing its vulnerability to disasters through the increase of its capacity to deal with natural phenomena, can better protect the human rights of its population.

The soft law instruments on disaster risk reduction do not have effects in the practice of the bodies established within the UN. This is a divergence that explains the nature of the acts adopted by the committees monitoring the implementation of human rights treaties. Unlike regional courts, these committees do not have a binding legal value, thus being more flexible in the face of social and legal changes (McCall-Smith, 2016). The acts of the committees as a source of soft law recognize the institutions, that are responsible for the control by the states of the treaties on the protection of human rights.

These institutions are independent and constituted by experts (McCall-Smith, 2016; Coomans, 2018; Liakopoulos, 2020a)⁸¹.

The elements of the committees' opinions also take into account the decisions of internal courts. The soft law instruments on disaster risk reduction contribute to the relevance of instruments for the final objective of the interpretation of the norms concerning the protection of human rights (McCall-Smith, 2016).

⁸¹ICJ, Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo), 30 November 2010, par. 66.

**Soft law instruments and international environmental law.
Precaution for disaster risk reduction**

A middle way between soft and hard law instruments is the interpretation, that is made by the jurisdictional bodies. There are no international jurisdictions, that interpret and apply the treaties, that concern the protection of the environment and the international jurisprudence on the environment. The developments in these areas are part of international law as a central role, that is assumed by the acts, that are adopted by the conferences of the parties (COP), and the related conventions, that are part of it (Wierserna, 2009; Boisson De Chazournes, 2010)⁸².

The Hyogo framework, the Sendai framework, the Conferences of the Parties to the Convention on Biological Diversity and the Ramsar Convention on Wetlands have highlighted ecosystems to achieve disaster risk reduction as identified by soft law instruments⁸³. Biodiversity, the plurality of COP resolutions, the Hyogo⁸⁴ and the Sendai framework⁸⁵ aim to apply an ecosystem-

⁸²ILC, Second report on subsequent agreements and subsequent practice in relation to the interpretation of treaties, op. cit., par. 84-111.

⁸³COP Convention of Ramsar, Wetlands and disaster risk reduction, 2015, op. cit.. COP, Convention on biological biodiversity, Biodiversity and climate change and disaster risk reduction, 2014, op. cit.

⁸⁴Hyogo framework for action 2005-2015: building the resilience of Nations and communities to disasters (Hyogo framework), adopted from the World conference on disaster reduction and from the UNGA, International Strategy for Disaster Reduction, Res. 60/195 of 2 March 2006, par. 19(i)(a).

⁸⁵Sendai framework, op. cit., par. 30(n).

based disaster risk reduction approach. This is an approach that adopts measures for the protection of biodiversity and ensures ecosystems for the mitigation functions and prevention of disaster risks⁸⁶.

With regard to the conservation of biological diversity for the purposes of disaster risk reduction, the COPs have sought:

“(...) to increase cooperation between the United Nations Secretariat for Disaster Risk Reduction (UNDRR) and the institutions responsible for interpreting and applying the conventions on biodiversity⁸⁷ (...) can produce in addition to the more common one of helping to clarify the content of conventional norms (...) between disaster risk reduction and biodiversity can help to make the obligations to protect biological diversity more effective: disaster risk reduction is perceived by the international community as an urgent challenge for humanity, also in light of the phenomenon of climate change, so recognizing that the conservation of biodiversity has a fundamental role in this area. It can push states and international institutions to pay greater attention to the problem of the loss of biological diversity and to increase efforts to prevent it (...). The concept of disaster risk reduction becomes a means to exert diplomatic pressure on states in order to make environmental obligations more effective (...) the need to protect biodiversity in international forums where disaster risk reduction is discussed disaster risk; a further consequence of such cooperation would be to increase the coherence between international policies pursuing interrelated objectives (...)”⁸⁸.

The forms of interaction are based on following the objectives of the conventions on biodiversity and enriching the international practice concerning disaster risk reduction. Thus, the states adopt the relevant protection measures:

⁸⁶COP, Convention on Biological Diversity, Biodiversity and climate change and disaster risk reduction, op. cit.

⁸⁷COP Convention of Ramsar, Wetlands and disaster risk reduction, op. cit., par. 35. COP Convention on biological biodiversity, Biodiversity and climate change and disaster risk reduction, op. cit., par. 7.

⁸⁸Sendai framework, op. cit., par. 28(b). COP Convention on Biological Diversity, Biodiversity and climate change and disaster risk reduction, op. cit., Annex, par. 5.

“(...) biological diversity that integrate the objective of disaster risk reduction; to this end, guidelines have been identified and states have been asked to indicate in their reports the actions taken to implement them⁸⁹ (...). States, in defining internal measures for the conservation of biodiversity, tend to refer to the Sendai framework and to the objective of disaster risk reduction (...). The objective of reducing disaster risks tends increasingly to guide the interpretation of international obligations for the protection of biodiversity (...)”.

The Hyogo framework has aimed at what was appropriate for the purposes of protection of any cultural heritage worldwide. A function of the soft law instruments on disaster risk reduction and on obligations arising from climate change, are the basis of interpretation of the obligation to adapt to climate change recognized by the COP regarding the United Nations Framework Convention on Climate Change⁹⁰.

This is a reality of a double repetitive form of the relevant Article 7 of the Paris Agreement that has not explicitly referred to the concept of disaster risk reduction but influences the soft law acts by highlighting the concepts of vulnerability, resilience and capacity. Strategies that do not refer to the climate change of the Sendai framework.

In order to comprehensively predict the legal effects of the forms between soft law acts and disaster risk reduction of international environmental instruments, it is necessary to take into account the tendency of the institutions and to interpret the

⁸⁹COP Convention on biological diversity, Biodiversity and climate change, op. cit., Annex, par. 2-9.

⁹⁰COP UNFCCC, Report of the COP on its 16^o session, Addendum, Part two, Cancun, 2010, par. 14(e). COP UNFCCC, Adoption of the Paris Agreement, 2015, op. cit.

environmental treaties according to the principles arising from international law in the field of disaster risk reduction.

**What are the effects of soft law on disaster risk reduction?
Due diligence and disaster prevention in international
environmental and human rights law**

Soft law acts produce legal effects through custom and existing conventional norms on the subject (D'Aspremont, 2008; Thürer, 2015). This orientation comes from international acts, that are adopted in the direct or indirect manner of the concept of disaster risk reduction. The International Court of Justice (Liakopoulos, 2020a)⁹¹ and the International Law Commission (Liakopoulos, 2020b)⁹² have already taken into consideration the acts that come from international organizations and are relevant for the existence of a customary norm, thus contributing to the development of the right to protection and precaution of disaster risks according to international law⁹³. The existence of a customary norm proves and regulates the practice of states as a basis that concentrates the legal effects, that derive from a soft

⁹¹ICJ, Lawfulness of the use of nuclear weapons by no-state in an armed conflict, ICJ Reports, 1996, parr. 70ss. Military and paramilitary activities in Nicaragua (Nicaragua v. United States), precautionary measures, ordinance, 10 May 1984, ICJ Reports 1984, pp. 188ss.

⁹²ILC, Draft conclusions on identification of customary international law, op. cit., Conclusions 12.

⁹³ICJ, Lawfulness of the use of nuclear weapons by no-state in an armed conflict, op. cit., par. 70.

law instrument to the interaction of existing law⁹⁴.

Soft law acts for disaster risk reduction determine the measures, that states adopt for the conventional norms of human rights and environment. Soft law instruments are not called directly but through the orientation, that integrates the international norms, that are existing for the prevention of disasters of the non-binding acts on disaster risk reduction. The related soft law standards on disaster risk reduction coincide with due diligence every day that states prevent disasters. The standards of due diligence require the adoption of laws and regulations for disaster risk reduction by identifying the risk assessment and the man-made disaster.

Soft law instruments in disaster risk reduction in international human rights and environmental law extend the content of disaster prevention obligations. The international law of prevention obligations develops the law of disaster protection that is also applied in natural disasters. Procedural measures, that concern risk management, are concentrated on an immediate way to the disaster, thus, affirming the holistic approach of procedural obligations for risk components, vulnerability and exposure.

The soft law acts and the clarification of disaster prevention obligations through treaty interpretation takes into account the

⁹⁴ILC, Draft conclusions on identification of customary international law, op. cit., Conclusion 12, comm. 8.

developments, through the soft law acts and the Sendai framework, that has taken into account Article 31, par. 3 a) and b) of the VCLT (Hollis, 2020)⁹⁵.

A legal effect that soft law acts have on disaster risk reduction by influencing the negotiation of provisions that contain treaties on human rights and the environment (Thürer, 2015).

Each convention has as its objective the protection of individuals, who are part of the categories of people vulnerable to the ad hoc provisions for the protection of human rights in times of disasters⁹⁶.

Concluding remarks

When we talk about soft law acts, in the field of disaster risk reduction, we are referring to an international practice in the field of environmental and human rights law. Obviously, it is not a consolidated practice but is at an initial stage as can be understood from COP documents, from the control bodies, that

⁹⁵According to Art. 31 VCLT: “3. There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation (...)”. ILC, Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, 70^o session, UN Doc. A/73/10, 2018, par. 51.

⁹⁶See also: African Charter on the rights and welfare of the child of 1st July 1990, art. 23. African Union Convention for the protection and assistance of internally displaced persons in Africa of 23 October 2009, entered in force in 6th December 2012, art. 4 par. 2; Inter-American Convention on protecting the human rights of older persons of 15 June 2015 and entered in force on 11 January 2017, art. 29. Protocol to the African Charter on human and peoples’ rights on the rights of older persons of 31 January 2016, art. 14.

are established by the human rights treaties and the conventional norms (McCall-Smith, 2016). It is a practice that is however capable and adequate for a precautionary and precautionary approach to disaster risks arriving at an affirmation of a standard of due diligence for the prevention of disasters in the soft law acts in this matter.

As precautionary elements we consider the preventive actions, which have an holistic character about the forecast of a uniform approach to the prevention of natural and man-made disasters. These are innovative elements for the prevention of disasters that define the precautionary nature. We distinguish this novelty from common international law because of the obligation of prevention that has certainty to a prejudice of a protected legal asset. The consolidated prevention of international law asks for an immediate protection of the damage.

The tendencies of a precautionary approach for disaster risks are related to the risks of serious and irreversible environmental damage. The risks are concentrated on the sector of climate change and the loss of biodiversity as reasons, that produce effects from risks, that are considered as serious, and that have a continuous frequency in our days.

Adversely, the tendency of the application of international law to the prevention of disasters is consistent with the content of the soft law acts in the field of recognition of international law and

in connection with the vulnerability caused by the disasters themselves.

A disaster is an event, an effect of an immediate cause, that causes precarious conditions and social and environmental vulnerability in people, and in the environment, where negative effects are produced.

The continuing difficulty of saving natural events through unpredictability and of responding to the emergency are paths that do not walk together with the typology of phenomena, thus requiring the adoption of measures that prevent, reduce social and environmental vulnerabilities of natural disasters and measures that reduce exposure to people, property, and the environment to natural events. Such events lead towards the standard of due diligence for the prevention of natural and man-made disasters.

Soft law acts in the field of disaster risk reduction of international norms on the protection of human rights and the environment emerge from the application of a precautionary approach of a series of measures have a purely procedural character.

Precaution produces effects at the procedural level, thus, requiring states to take into account decision-making processes of the possible risks, that arise from an activity, a plan, a program that is implemented. Taking procedural measures in

consideration as soft law acts in the field of disaster risk reduction are important for disaster prevention and the institutional apparatus of disaster risk reduction, risk assessment, dissemination of information on risks, public participation in decision-making processes in emergency plans. Procedural measures are the basis of a minimum level of protection and prevention.

The norms on the protection of human rights and the environment to a holistic approach to disaster risks is a trend of applying a standard of diligence for the prevention of natural or man-made disasters, as a product of two important developments.

Procedural measures adopted through preventive measures by every democratic or non-democratic state for the prevention of risks are developments, that tend to reduce the characteristics of dangerous activity by developments, that tend to ask states to take into account dangerous activities for conditions of vulnerability, exposure of dangerous events of people of property and the environment. The recognition of procedural obligations for the prevention of natural disasters asks states to take into account decision-making processes in vulnerabilities and exposure of natural disaster risks, that are the consequences of economic, social, urban planning and/or other choices.

Soft law acts also have an influential basis in the sector of

negotiation of the provisions of treaties, that are adopted in the field of disasters⁹⁷, the protection of human rights and vulnerable people and climate change (Boyle, 2018)⁹⁸. The prevention of disasters through soft law acts produce effects, such as obligations of states. It is a mix between soft law acts and international norms for the protection of the environment and human rights related to the precaution of risks to an international disaster.

The sector of risk prevention is not exhaustive in the sector of the environment and human rights but is also concentrated on other sectors, such as those of the economy, immigration, the sea, the protection of cultural heritage, health, etc. Sectors that come from and cause damage to natural disasters. Disaster risk reduction, thus, protects the cultural heritage of each country (Zorzi Giustiniani, 2022).

The legal effects arising from soft law acts in the field of disaster risk reduction come from the national practice of states that results from laws, regulations and decisions of domestic courts and tribunals (Ahmed, 2013; Raikes, Smith, Baldwin, Henstra, 2022; Zorzi Giustiniani, 2022). This type of

⁹⁷European Union Regulation 2021/836 of the European Parliament and of the Council of 20 May 2021 amending decision no. 1313/2013/EU on a Union Civil Protection Mechanism, Recital 11, art. 13, par. 3. Sendai framework for disaster risk reduction 2015-2030 (Sendai framework), adopted by the World conference on disaster risk reduction, Sendai, 2015, recital 11 and art. 13, par. 3.

⁹⁸Paris Agreement-United Nations Framework Convention on Climate Change, adopted in Paris on 22 April 2015, op. cit., art. 7.

investigation also leads to the same conclusion topic, that is, the ascertainment of international law that forms customary norms, as general principles of the law common to domestic systems and as an obligation to reduce disaster risk.

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